

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Defamation/Libel Anti-SLAPP Statute

Plaintiff, a former police officer provides forensic consultation and expert witness testimony to homicide and other criminal investigations. Defendants similarly provide expert testimony in criminal trials, although primarily for defense attorneys.

Plaintiff filed a complaint for defamation and libel against defendants in state court. Defendants filed for removal to U.S. District Court based on diversity, and then filed a special motion to strike based on Oregon's "Anti-SLAPP" (strategic litigation against public participation) law. ORS 31.150-31.155. One defendant also filed a motion to dismiss for lack of personal jurisdiction

and in the alternative an Anti-SLAPP motion to strike.

Judge Aiken granted in part and denied in part the defendants' motion to strike, including dismissing two defendants outright from the case. The court further denied the motion to dismiss based on lack of personal jurisdiction. Englert v. MacDonell
CV 05-1863-AA
Opinion May 11, 2006
Plaintiff's Counsel:
Victor Calzaretta
Defense Counsel:
Eric Neiman, Charles Hinkle

Rehabilitation Act

The Court granted defendant's Motion for Partial Summary Judgment as to plaintiffs' claims under the Rehabilitation Act on the ground that plaintiffs failed to meet their burden to establish that their employer received

federal financial assistance, a required element of a prima facie case of discrimination under the Rehabilitation Act.

The Court found plaintiff's employer, the State Public Defender's Office and successor entities, did not receive federal funds directly during the period plaintiffs were employed there, and the Court rejected plaintiffs' contention that their employer's receipt of benefits from other state agencies that did receive federal funds was sufficient to meet the requirements of the Rehabilitation Act. Sharer v. State of Oregon
CV 04-1690-BR
Opinion June 28, 2006
Plaintiffs' Counsel:
William Later
Defense Counsel:
Eric Wilson

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Untimely Filing

Judge Panner granted plaintiffs' amended motion to strike defendants' untimely reply brief. Defendants filed an untimely reply brief without first seeking leave from the court, or attempting to explain the late filing. After plaintiffs moved to strike the reply brief, defendants sought leave to file out of time.

Judge Panner was unconvinced by defendants' reasons for the late filing and granted plaintiffs' motion to strike.

Oregon Natural Resources Council v. Goodman et al.,
CV 05-3004-PA
Order, June 30, 2006
Plaintiffs' Counsel:
Christopher Winter
Defense Counsel:
Owen Schmidt

Standing

Judge Aiken granted defendant's motion for summary judgment finding that plaintiff did not have standing to assert his claims. The court dismissed plaintiff's complaint.

The court initially granted defendant's motion to dismiss plaintiff's complaint due to lack of standing, however, allowed plaintiff leave to file an amended complaint. The parties then stipulated and the court ordered, that discovery proceed only on the standing issue. Discovery on the merits was stayed pending this court's determination of standing.

Morris v. Cadence Design Systems, Inc.
CV 04-877-AA
Opinion, June 6, 2006
Plaintiff's Counsel:
Michael Zusman
Defense Counsel:
Richard Meneghello

Attorney Fees

A jury awarded plaintiff \$1,110 on his Family Medical Leave Act claim against the defendant. By law the award was doubled to \$2,220. Plaintiff moved for \$81,110 in attorneys fees, and \$5,773.06 in costs. After a thorough analysis, Judge Panner ultimately awarded plaintiff \$42,163 in attorney fees and \$3,257.06 in costs.

Farrell v. Tri-Met
CV 04-296-PA
Opinion, July 7, 2006
Plaintiff's Counsel:
Daniel Snyder
Defense Counsel:
Jana Toran

Statute of Limitations

Judge Aiken granted defendants' motion to dismiss based on the statute of limitations. Plaintiff brought a claim against defendant alleging misappropriation/ right of publicity. The court found that Oregon's two-year statute of limitation period applied to plaintiff's claim. ORS 12.110(1). Even if the court allowed plaintiff additional time assuming that plaintiff did not find out about the publication until a later date, plaintiff's claim remained time-barred.

Johnson v. Harper/Collins
CV 06-747-AA
Order, August 1, 2006
Plaintiff: Donald Johnson, pro se
Defense Counsel:
Duane Bosworth